

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

CHARGES FOR PRIVATE USE OF PUBLIC FACILITIES – INSERT

LONG TITLE

General Description:

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Highlighted Provisions:

This bill:

▶

▶ imposes requirements for review of privatization; ~~and~~

▶ establishes a process to determine a minimum amount that can be charged by

a government entity;

▶ addresses collection of a charge;

▶ requires reporting; and

▶

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

ENACTS:

....

~~[63-55d-505]~~

63-55d-601

63-55d-602

63-55d-603

63-55d-604

63-55d-605

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31 Statutory text:

32

33 **CHAPTER 55d. GOVERNMENT COMPETITION AND PRIVATIZATION ACT**

34

35 **Part 1. General Provisions**

36

37

38 **63-55d-102. Definitions**

39 As used in this chapter:

40

41 (2) "Approximate value of a public facility" means the value of a public facility determined by
42 the county assessor that approximates the fair market value of the public facility in
43 accordance with Section 63-55d-502.

44

45 (8) "Daily square foot charge" means the amount calculated under Subsection 63-55d-501(2).

46

47 (15)(a) "Private event" means an event that:

48 (i) is primarily operated by a private person; and

49 (ii) is not operated on behalf of a government entity.

50 (b) "Private event" means an event described in Subsection (15)(a), whether or not:

51 (i) the general public is permitted to attend the event; or

52 (ii) the private person charges a person for attending the event.

53

54 (17) "Private person" means a person who is not a government entity.

55 (18)(a) "Public facility" means a building, structure, or other improvement that is constructed
56 on property owned by a government entity.

57 (b) "Public facility" does not mean:

58 (i) an unoccupied structure that is a component of the state highway system;

59 (ii) a privately owned structure that is located on property owned by a government entity; or

60 (iii) a structure that is located on land administered by the School and Institutional Trust

61 Lands Administration under a lease, permit, or contract with the School and Institutional Trust

62 Lands Administration.

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Part 5. Charges for Private Events

63-55d-501. Calculation of charge to private person.

67 (1)(a) If a government entity permits a private person to use a public facility for a private
68 event, the government entity shall charge the private person an amount equal to or greater
69 than the amount calculated by:

70 (i) multiplying the daily square foot charge by the number of square feet that the private
71 person is permitted to use for the private event;

72 (ii) adding to the amount calculated under Subsection (1)(a)(i) the amount calculated under
73 Subsection (3); and

74 (iii) adding to the amount calculated under Subsection (1)(a)(ii), an amount calculated by
75 multiplying the amount calculated under Subsection (1)(a)(ii) by .10.

76 (b) Nothing in this part prevents a government entity from charging an amount greater than
77 the amount described in Subsection (1)(a).

78 (c) If a government entity decides to permit a private person to use a public facility for a
79 private event after a fiscal year begins, the government entity shall charge an amount equal
80 to or greater than the amount required by Subsection (1)(a), notwithstanding that the daily
81 square footage charge is determined on a fiscal year basis.

82 (2) For each fiscal year beginning on or after July 1, 2008, a government entity shall
83 calculate for a public facility that the government entity permits a private person to use for a
84 private event a daily square foot charge as follows:

85 (a) the government entity shall:

86 (i) determine the approximate value of the public facility as of the beginning of that fiscal
87 year;

88 (ii) multiply the approximate value of the public facility by .01;

89 (iii) divide the amount calculated under Subsection (2)(a)(ii) to determine an amount based
90 on one square foot; and

91 (iv) divide the amount calculated under Subsection (2)(a)(iii) by 365;

92 (b) the government entity shall:

93 (i) determine:

94 (A) the net revenue the government entity received for the use of the public facility by a

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95 private person for a private event in the immediately preceding fiscal year; or
96 (B) if a private person did not use the public facility for a private event in the immediately
97 preceding fiscal year, determine an amount equal to the amount described in
98 Subsection (2)(c):
99 (ii) multiply the amount calculated under Subsection (2)(b)(i) by .05;
100 (iii) divide the amount calculated under Subsection (2)(b)(ii) to determine an amount based
101 on one square foot; and
102 (iv) divide the amount calculated under Subsection (2)(b)(iii) by the greater of:
103 (A) 12; or
104 (B) the number of private events held at the public facility in the immediately preceding fiscal
105 year;
106 (c)(i) the government shall prorate on the basis of the square footage of the public facility the
107 amount of the following costs of the public facility that is allocable to one square foot:
108 (A) a cost of general overhead, including:
109 (I) an administrative cost; or
110 (II) a cost for utilities;
111 (B) an operational cost;
112 (C) a maintenance cost; and
113 (D) a construction or other capital cost related to construction, acquiring, or improving the
114 public facility; and
115 (ii) divide the amount calculated under Subsection (2)(c)(i) by 365;
116 (d) the government entity shall:
117 (i) calculate the cost to the government entity generally associated with permitting a private
118 person to use the public facility for a private event;
119 (ii) calculate the amount a sales and use tax the government entity would have paid if the
120 government entity were required to by sales and use taxes under Title 59, Chapter 12, Sales
121 and Use Tax Act, for a purchase the government entity generally makes when permitting a
122 private person to use the public facility for a private event;
123 (iii) add the amounts calculated under Subsection (2)(d)(i) and (ii);
124 (iv) divide the amount calculated under Subsection (2)(d)(iii) to determine an amount based
125 on one square foot; and
126 (v) divide the amount calculated under Subsection (2)(d)(iv) by the greater of:

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127 (A) 12; or

128 (B) the number of private events held at the public facility in the immediately preceding fiscal
129 year; and

130 (e) add together the amounts calculated in Subsections (2)(a) through (d).

131 (3) Before entering into an agreement to permit a private person to use a public facility for a
132 private event, a government entity shall determine the specific cost to the government entity,
133 to the extent that the cost is not included in Subsection (2), for permitting the private person
134 to use of the public facility for that private event.

135

136 **63-55d-502. Collection of charge may not be reduced or forgiven – Condition of future**
137 **use.**

138 (1) A government entity may not reduce or otherwise permit a private person not to pay, in
139 whole or in part, a charge required by this part.

140 (2) A government entity shall use reasonable efforts to collect a charge required by this part,
141 including taking an action that the government entity takes to collect another debt owed the
142 government entity.

143 (3) A private person may not use a public facility of a government entity if that private person
144 owes a charge required by this part that the person has not paid to the government entity for
145 a previous private event at a public facility of the government entity.

146

147 **63-55d-503. Report charges to governor and Legislature.**

148 A government entity shall annually report in writing to the governor and the Legislature, by no
149 later than 90 days after the day on which a fiscal year ends:

150 (1) the daily square foot charge for a public facility that the government entity permits a
151 private person to use for a private event in that fiscal year;

152 (2) the number of private events for which a public facility is used in that fiscal year;

153 (3) the type of private events for which a public facility is used in that fiscal year; and

154 (4) the gross revenue the government entity received for permitting a private person to use a
155 public facility for a private event in the previous year.

156

157 **63-55d-504. Valuation of property.**

158 The county assessor in the county in which a public facility shall assess the approximate

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159 value of a public facility in a manner consistent with how the county assessor assess the fair
160 market value of other property in the county.

161

162 **Part [5]6. Enforcement**

163

164 **63-55d-[501]601. Exemption from Administrative Procedures Act.**

165

166

167 **63-55d-[502]602. Initial process for a complaint.**

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169

170 **63-55d-[503]603. Hearing – Costs – Termination of commercial activities.**

171 (1)(a) The commission shall hold a hearing on the complaint filed under Section 63-55d-

172 [502]602 if the government entity against which the complaint is filed:

173 (i) denies that it is or has violated this chapter; or

174 (ii) is determined by the commission to have failed to cooperate as required by Subsection

175 63-55d-[502]602(5).

176 (b) The commission shall hold a hearing required under this Subsection (1) within 60 days of

177 the day on which:

178 (i) the commission receives the written denial of the complaint; or

179 (ii) the commission determines the government entity fails to cooperate as required by

180 Subsection 63-55d-[502]602(5).

181 (c) A hearing conduct under this section is open to the public, unless the commission closes

182 the hearing in accordance with Title 57, Chapter 4, Open and Public Meetings Act.

183 (2) At a hearing conducted under this section, the commission shall provide an opportunity

184 to present evidence to:

185 (a) the complainant; and

186 (b) the government entity against which the complaint is filed.

187 (3)(a) Within 30 days after the hearing, the commission shall:

188 (i) issue an order; and

189 (ii) provide a copy of the order to:

190 (A) the complainant; and

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- 191 (B) the government entity against which the complaint is filed.
- 192 (b) An order required by this section shall be in writing and state:
- 193 (i) whether or not the government entity is or has violated this chapter;
- 194 (ii) what action, if any, the government entity is required to take to remedy a violation of this
- 195 chapter;
- 196 (iii) if the complaint is made on the basis of ~~[the government entity engaging in a commercial~~
- 197 ~~activity]~~ a violation of Part 3, Government Competition Requirements, whether or not the
- 198 government entity is required to stop engaging in the commercial activity;
- 199 (iv) if the complaint is on the basis of a violation of Part 5, Charges for Private Events,
- 200 whether or not the government entity:
- 201 (A) is required to charge a different amount to allow for use of a public facility for private use;
- 202 or
- 203 (B) may allow for use of a public facility for a private event;
- 204 ~~[(iv)]~~(v) the time by which a government entity shall take an action required by the order; and
- 205 ~~[(v)]~~(vi) any other finding the commission determines is appropriate.
- 206 (c) The commission may, in an order required by this Subsection (3), require a government
- 207 entity to privatize a commercial activity that is the basis of the complaint.
- 208 (4) If the commission determines that a government entity against which a complaint is filed
- 209 does not or has not violated this chapter, the commission may require the complainant to pay
- 210 the lesser of:
- 211 (a) the costs incurred by the commission in reviewing the complaint and conducting the
- 212 hearing; and
- 213 (b) \$1,000.
- 214 (6) A complainant or government entity may appeal an action by the commission to a district
- 215 court in the same manner that an informal adjudicative proceeding is appealed under
- 216 Sections 63-46b-14, 63-46b-15, 63-46b-17, and 63-46b-18.

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218 **63-55d-[504]604. Injunction.**

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221 **63-55d-[505]605. Monitoring of compliance.**

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